

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM)
MOTORS, INC., and MATTINGLY AUTO)
SALES, INC., individually and on behalf of)
other members of the general public similarly)
situated,)

Plaintiffs,)

v.)

COX ENTERPRISES, INC., COX)
AUTOMOTIVE, INC., NEXTGEAR CAPITAL,)
INC. F/K/A DEALER SERVICES)
CORPORATION, successor by merger with)
Manheim Automotive Financial Services, Inc.,)
and JOHN WICK,)

Defendants.)

Case No. 1:14-cv-01589-TWP-DKL

**DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY
IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Defendants respectfully move the Court for leave to file the attached Sur-Reply in Opposition to Plaintiffs' Motion for Class Certification. Plaintiffs' reply memorandum in support of class certification [Doc. 165] contained a new proposed class definition and cited new evidence not relied upon in their initial motion [Docs. 153, 154]. The class definition proposed in the reply brief expressly narrows the putative class from the one to which Defendants responded in their opposition briefing. [*Compare* Doc. 165 at 2, *with* Doc. 154 at 7; *see also* Doc. 160.] In addition, Plaintiffs cite (and misconstrue) various new evidence not relied on in their initial motion, meaning Defendants had no prior chance to respond to it. [*See, e.g.*, Doc. 165 at 4-5, 14-17.]

A sur-reply memorandum is necessary to respond to these material changes Plaintiffs made to the scope of their motion for class certification and will assist the Court in resolving the motion. Plaintiff's reply was filed only 20 days ago; the Court has not ruled on the certification motion yet; and no party will be prejudiced by the filing of this sur-reply.

Wherefore, Defendants respectfully request that the Court grant them leave to file the attached Sur-Reply in Opposition to Plaintiffs' Motion for Class Certification.

Respectfully submitted, this 5th day of December, 2016.

s/ Tracey K. Ledbetter

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic service notification system, this 5th day of December, 2016:

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